

December 6, 2002

R-19J

Darrell Bazzell, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921

Dear Mr. Bazzell:

The United States Environmental Protection Agency (USEPA) is in the process of reviewing Wisconsin's revised part 70 operating permit program submittal, dated March 28, 2001, and the additional supplements to the submittal, the most recent one of which is dated November 27, 2001. In order to fully evaluate the permit fee components of Wisconsin's operating permit program, including our specific concerns outlined below, we are requesting additional information regarding your part 70 fee program. We would like for you to submit this additional information as soon as possible so that we may complete our review of your part 70 program revisions. However, we understand that you may need some time to compile the information. Please contact us with a target date for responding to this request. In addition, please note that our review of Wisconsin's revised program submittals is nearly complete, and USEPA is also working with Wisconsin Department of Natural Resources staff to address additional clarifications regarding other permit program components.

Based on the limited fee information provided in the March 28, 2001, submittal and the November 27, 2001, supplement, USEPA is concerned that Wisconsin's operating permit fee provisions may not meet federal requirements. Title 40 Code of Federal Regulations, Section 70.9(a) requires that part 70 fees be sufficient to cover permit program costs, and also requires that fees be used solely for permit program costs. Our specific concerns with Wisconsin's fee program are noted in the discussions in Numbers 2 and 3 below.

If Wisconsin is able to provide information addressing our concerns and if the information is adequate, USEPA would be able to propose approval of the revisions to Wisconsin's operating permit fee program. In the event Wisconsin cannot adequately address our concerns, and USEPA makes a determination that the State's operating permit fee program does not meet the part 70

requirements, section 70.10 provides for the issuance of a Notice of Deficiency (NOD). Any NOD would start an 18-month clock for the State to correct the program deficiencies. If the State has not corrected the deficiencies within 18 months after the date of the NOD, USEPA would be required to apply the nonattainment New Source Review offset sanctions and highway sanctions under section 179(b) of the Clean Air Act, in accordance with section 179(a). In addition, USEPA would be required to promulgate, administer and enforce a whole or partial operating permit program within 2 years of the date of the NOD. USEPA looks forward to working with Wisconsin and making an expeditious determination on the State's revised part 70 program.

Section 70.4(b)(8) and 70.9 address the operating permit program's permit fee and funding requirements. In order for us to complete USEPA's review of Wisconsin's revised fee program and to further evaluate the concerns we are raising, we ask that you submit the following documentation:

1. A complete description of the State fee structure, and updated rules and/or statutes;

The fee structure description in Appendix I of the March 28, 2001, submittal and the fourth program supplement, dated November 27, 2001, discuss certain proposed and final changes to the fee program, but do not provide a complete description of how Wisconsin now assesses fees. In addition, please submit any revised regulatory and/or statutory fee authority. The November 27, 2001, submittal discusses changes (fee calculation baselines, funded activities) that are not reflected in Appendix F (rules) and/or Appendix H (statutes) of the March 28, 2001, submittal.

2. A demonstration that Wisconsin's fee schedule results in the collection and retention of revenues sufficient to cover the operating permit program costs;

The State should provide either a demonstration that the fee schedule results in the collection of fees equivalent to part 70's presumptive minimum fee schedule [Section 70.9(b)(2)]¹, or, if Wisconsin's fees are less than the presumptive minimum

¹The Consumer Price Index adjusted presumptive minimum fee is currently \$36.60 per ton of actual emissions from each regulated pollutant (for presumptive fee calculation), and is effective through August 31, 2003. See Section 70.9(b)(2) for a complete description of the presumptive minimum fee schedule.

amount, the State must provide a detailed accounting that the program's fees are sufficient [Section 70.9(b)(5)]. Although Wisconsin has increased its billable fee emissions cap to 5,000 tons per pollutant per source, USEPA believes that a detailed fee analysis may be necessary because Wisconsin's fee schedule no longer includes the annual Consumer Price Index adjustment. In addition, we are concerned that Appendix I of the March 28, 2001, submittal projects that the cost of the program would exceed revenue beginning in fiscal year 2002. Further, the November 27, 2001, submittal noted that 12 full time equivalent positions were either eliminated or no longer funded by operating permit program fees. Wisconsin should address these issues as part of its demonstration that the State operating permit program has revenues sufficient to cover the permit program costs. For additional information on preparing a fee analysis, please see the December 22, 1993, memorandum entitled "Title V Fee Demonstration and Additional Fee Demonstration Guidance" and USEPA's February 1996 Federal Operating Permit Program Fee Cost Analysis (enclosed).

3. A description of the operating permit program activities and costs, and a description of the activities funded by part 70 fees, including personnel.

As part of the fee demonstration in Number 2 above, Wisconsin should describe the State's operating permit program activities and the associated funding sources. Wisconsin should also provide a description of all activities funded by part 70 fees, including information regarding the part 70 funded full time equivalent positions listed in the November 27, 2001, submittal. Section 70.9 requires that permit fees cover the program costs, and that permit fees be used solely for program costs. We are concerned that Wisconsin's November 27, 2001, submittal states that legal and information technology services for the State air program are to be funded by federal indirect funds and not part 70 fees; however, the submittal did not address to what extent these positions involve part 70 activities. In addition, we would like verification that the part 70 funded full time equivalent positions are engaged in part 70-related activities. For additional information regarding program activities and funding, please refer to the enclosed August 4, 1993, memo from John S. Seitz, former Director, Office of Air Quality Planning and Standards, USEPA, entitled "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V", and the July 21, 1994, memo from Mary Nichols, former Assistant Administrator, Office of Air and Radiation, USEPA, entitled "Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants".

Thank you very much for your attention to these concerns. If you have any questions regarding these operating permit program fee issues, or regarding any other matter, please do not hesitate to contact me.

Very truly yours,

/s/

Thomas V. Skinner
Regional Administrator

Enclosures